

HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

KEVIN ZWICKER and TERESA K. PALMER,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

GENERAL MOTORS CORPORATION, a
Delaware corporation,

Defendant.

MDL No. 1896

NO. C07-0291 JCC

**DECLARATION OF KIM D.
STEPHENS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

**Noted for Consideration:
November 6, 2008, 9:00 a.m.**

ROY FALK, LEE KRATZER and BARBARA
McRAE, on behalf of themselves and all others
similarly situated, and on behalf of the general
public,

Plaintiffs,

v.

GENERAL MOTORS CORPORATION, a
Delaware corporation,

Defendant.

NO. C08-0031 JCC

CHRIS CHRISTENSEN, TERRY M. KELLY,
and PEGGY KELLY, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

GENERAL MOTORS CORPORATION, a
Delaware corporation,

Defendant.

NO. C08-0032 JCC

DECLARATION OF KIM D. STEPHENS IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT - 1

MDL No. 1896

4561/001/221700.1

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1 I, Kim D. Stephens, declare as follows:

2 1. I am a member in good standing of the Washington State Bar. I am the lead
3 attorney from Tousley Brain Stephens PLLC ("Tousley") representing the Plaintiff Class in this
4 matter. I make this declaration based on my personal knowledge and in support of Plaintiffs'
5 Motion for Final Approval of Class Action Settlement. If called to testify concerning the
6 content of this declaration, I would competently testify as follows:

7 2. In lawsuits filed in Washington, Oregon and California, Plaintiffs allege the
8 following GM vehicles contain a flawed part — the stepper motor — that may cause premature
9 speedometer failure: 2003, 2004, and 2005 (manufactured on or before December 31, 2004)
10 model years Chevrolet Silverados, Avalanches, Suburbans and Tahoes; Cadillac Escalades; and
11 GMC Sierras, Yukons and Yukon XLs (hereinafter collectively, "the GM 800 Series" or "the
12 Trucks"). Plaintiffs contend that GM is liable for post-warranty failures of the defective
13 speedometers. Plaintiffs further allege that GM failed to disclose the Trucks contain
14 speedometers that may fail prematurely and that this failure poses a safety hazard because
15 vehicle owners with broken speedometers may be unknowingly driving faster than the speed
16 registered on the speedometer. Plaintiffs in all three cases have experienced speedometer
17 failures.

18 3. *Kevin Zwicker and Teresa K. Palmer et al. v. General Motors Corporation*,
19 Case No. C07-0291-JCC (W.D. Wash.). Plaintiffs filed this case on February 23, 2007,
20 alleging breach of express and implied warranty, misrepresentation, unjust enrichment, and
21 violation of Washington's Consumer Protection Act (RCW 19.86.010). GM moved to dismiss
22 the Complaint, claiming it had no liability for post-warranty failures. On July 26, 2007, the
23 Court denied the motion, with the exception of dismissing Plaintiffs' unjust enrichment claim.

24 4. *Roy Falk, Lee Kratzer and Barbara McRae et al. v. General Motors*
25 *Corporation*, Case No. C07-01731-WHA (N.D. Cal.). Plaintiffs filed this case on March 27,
26 2007, alleging violations of the Consumers Legal Remedies Act (CLRA), Business and
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1 Professions Code section 17200, fraud by omission, and unjust enrichment. GM moved to
 2 dismiss the Complaint. On July 3, 2007, the Court denied the motion with the exception of
 3 dismissing Plaintiffs' unjust enrichment claim. The Court rejected GM's request to bifurcate
 4 discovery between "class" and "merits" and set early deadlines.

5 5. *Robert W. Christensen, Terry M. Kelly and Peggy Kelly et al. v. General Motors*
 6 *Corporation*, Case No. CV07-0512-HA (D. Or.). Plaintiffs filed this case on April 9, 2007.
 7 The Court stayed this case pending ruling by the Judicial Panel on Multi-District Litigation
 8 ("JPML") on GM's motion to consolidate the three actions and transfer them to Washington.

9 6. On January 8, 2008, the JPML issued an order consolidating the three pending
 10 cases and transferring them to this Court. Since that time, one more case has been added:
 11 *Rebecca Connelly et al. v. General Motors Corporation*, Case No. 1:08-00483 (D. S.C.).

12 7. Before filing, Plaintiffs did extensive research through use of public records and
 13 the Internet to identify the scope of the speedometer failures, the affected vehicles, and the
 14 costs of replacement. Plaintiffs retained experts, interviewed mechanics in speedometer shops,
 15 and otherwise vigorously investigated and discovered their claims.

16 8. Discovery has shown that starting in 2003, consumers filed an unusually high
 17 number of complaints regarding speedometer failures in GM's full-size GM 800 Series trucks
 18 and SUVs. These vehicles include the Chevrolet Silverado, Avalanche, Suburban and Tahoe;
 19 the Cadillac Escalade; and the GMC Sierra, Yukon and Yukon XL ("GM 800 Series"). They
 20 contain an allegedly defective stepper motor, which can cause speedometer malfunctions.

21 9. Discovery has also shown that, as to trucks that are not covered by the
 22 settlement (i.e., those with speedometers that have lasted more than 80,000 miles), the issue of
 23 wear and tear of over 80,000 miles, and in some cases more than 100,000 miles, becomes a
 24 competing factor that constitutes an alternative cause of speedometer failure.

25 10. Plaintiffs reviewed over 75,000 pages of imaged documents, plus 13 CD-ROMs
 26 containing advertising produced by GM. Plaintiffs deposed three corporate designees
 27

1 regarding key aspects of GM's research and development, and claims processes: Mark
2 Schneider, Team Leader, WINS Warranty Claim Payment, GM, deposed on November 13,
3 2007; Robert Bordo, Engineering Group Manager, GM, and Brian Stouffer, Product
4 Investigator, GM, both deposed on November 14, 2007.

5 11. The parties also held several separate hours-long meet-and-confer sessions
6 regarding GM's discovery responses during August 2007.

7 12. GM continued to produce documents on a "rolling" basis prior to settlement.
8 Plaintiffs also commenced third-party discovery on two of GM's component suppliers, Delphi
9 and Innovative Sales & Marketing, Inc., as well as the Better Business Bureau.

10 13. Beginning in March 2007, shortly after the filing of the *Zwicker* action, GM has
11 informed us it had a series of discussions with the National Highway Traffic Safety
12 Administration ("NHTSA") concerning the rate of speedometer malfunctions in GM 800 Series
13 vehicles, after which GM agreed to initiate a Special Coverage Campaign for 2003 and 2004
14 GM 800 Series vehicles.

15 14. GM agrees that these lawsuits were a factor in its initiation of the Special
16 Coverage Campaign.

17 15. Shortly before the Special Coverage Campaign notification was sent, GM
18 informed Plaintiffs' counsel that the campaign would be undertaken, and the parties agreed to
19 mediate this dispute.

20 16. Mediation took place on September 27, and October 12, 2007, facilitated by the
21 Honorable Edward A. Infante, a former U.S. Magistrate Judge for the Northern District of
22 California and an experienced mediator.

23 17. On September 28, 2007, approximately six months after Plaintiffs' filed the
24 above three actions, GM mailed notice to affected customers of that "Special Coverage
25 Campaign" extending the warranties on the instrument panel cluster, which includes the
26 speedometer.

1 18. The Special Coverage Campaign extended the warranties from the existing three
2 years and 36,000 miles to seven years and 70,000 miles.

3 19. The parties reached an agreement in principle on class benefits at the second
4 mediation session. The benefits were enlarged beyond the Special Coverage Campaign with
5 the addition of 2005 model year GM 800 Series vehicles built before December 31, 2004. The
6 vehicles had a greater chance of containing a rotor which could cause the speedometer to
7 malfunction than those built after that date.

8 20. The benefits were further enlarged by adding a "parts only" warranty on the
9 instrument cluster for failures taking place between 70,000 and 80,000 miles. Most of the cost
10 of a speedometer replacement is the instrument cluster cost, not the labor.

11 21. After agreeing on these enlarged benefits, the parties then engaged in further
12 negotiations with considerable assistance from Judge Infante, over attorneys' fees to Class
13 Counsel.

14 22. The parties essentially concluded negotiations in late November 2007, but spent
15 the next three months documenting a formal Settlement Agreement, which was signed on
16 February 26, 2008.

17 23. Attached hereto as Exhibit 1 is a true and correct copy of the Settlement
18 Agreement with Exhibits.

19 24. Under the Settlement, the Class will receive an enhanced warranty pertaining to
20 the speedometers on the subject vehicles.

21 25. Also, Class Members who paid to repair their speedometers during the covered
22 period are entitled to reimbursement up to the amount GM would have paid a GM dealership to
23 make the repair.

24 26. Approximately 3.8 million Class Members who own Trucks manufactured in
25 2003 and 2004 will be entitled to free replacement (including labor) of their broken
26 speedometers for seven years or 70,000 miles, whichever comes first.

1 27. An additional 746,000 2005 GM Truck owners will be entitled to replacement or
2 reimbursement of their speedometers.

3 28. Plaintiffs' litigation and proposed Settlement therefore creates substantial
4 benefits for the Class as a whole, particularly for those Class Members who will save, on
5 average, roughly \$500 in repair costs if their speedometers need replacement.

6 29. As set forth in the Settlement Agreement, GM will act as the Claims
7 Administrator. Class Members may appeal an adverse determination by GM regarding their
8 claim through the dispute resolution processes available at the Better Business Bureau. GM
9 will pay for the cost of the dispute resolution process.

10 30. GM has agreed to pay Plaintiffs' attorneys' fees and costs in the amount of
11 \$2.3 million. These fees will be paid in addition to monies set aside for the Class and will not
12 affect reimbursements made to Class Members.

13 31. The Settlement Agreement provides for a \$1,500 stipend for each person who
14 served as a Class representative in the three cases. These stipends recognize their service to
15 and efforts on behalf of the Class. These stipends are in addition to the relief the Class
16 representatives will be entitled to under the terms of the Settlement and would be paid from any
17 amount awarded as attorneys' fees.

18 32. The media have widely reported that GM's financial condition is troubled. At
19 the time of negotiating the settlement, GM faced declining U.S. sales of 21.3 percent, and the
20 possibility of closing plants because of striking auto parts makers. At present, GM, according
21 to one news report: "faces a crisis like no other in its history." In the last 18 months, it lost
22 \$57.5 billion and has more than \$32 billion in long term debt. The poor economy has forced it
23 to close factories and lay off workers. In July 2008, GM suspended its dividend.

24 33. Attached hereto as Exhibit 2 is a true and correct copy of a FoxNews.com article
25 entitled "General Motors, Ford Sales Down in June; Nissan, Toyota Climb," dated July 03,
26 2007, and printed on October 3, 2008.

1 34. Attached hereto as Exhibit 3 is a true and correct copy of a CNNMoney.com
2 article entitled "Impact of GM Strike Set to Spread," dated September 25, 2007, and printed on
3 October 3, 2008.

4 35. Attached hereto as Exhibit 4 is a true and correct copy of a Canadian Press
5 article entitled "General Motors Doesn't Rule Out More Restructuring if 'Situation
6 Deteriorates'," dated and printed on October 3, 2008.

7 36. Only 16 objections have been received to the proposed Settlement. The
8 percentage of Class Members who have submitted negative comments is extremely low, less
9 than .01 percent of the Class.

10 37. Some objectors claim that this action should never have been brought because
11 the warranty has expired.

12 38. Other objectors contend the Settlement should cover all vehicles regardless of
13 mileage traveled.

14 39. This Settlement will capture the majority of Trucks with defective parts and
15 reimburse a great number of Class Members for their out-of-pocket expenses in fixing the
16 problem, while eliminating the substantial risks associated with continued litigation and trial.

17 40. In their reply papers, to be filed after the expiration of the comment deadline,
18 Plaintiffs will address all objections received in greater detail. If the reaction of the Class to
19 date is any indication, however, Plaintiffs expect the fraction of objectors will remain low,
20 reflecting overwhelming support for the Settlement.

21 41. Class Counsel here have extensive experience prosecuting class actions through
22 both settlement and trial.

23 42. Tousley supports this Settlement as fair, reasonable and adequate, and in the best
24 interests of the Class as a whole.

25 43. Tousley is a Seattle, Washington, law firm with a focus on complex civil and
26 commercial litigation emphasizing securities, financial, environmental, product liability,
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1 consumer, employment, and real estate matters. Tousley has extensive experience in class
 2 action matters and has both prosecuted and defended numerous multi-million dollar class
 3 actions. Tousley has been co-lead counsel in numerous consumer, product liability, securities,
 4 and employment cases.

5 44. The attorneys of Tousley have extensive experience in class action litigation,
 6 including complex unfair business practices and consumer protection cases. For example, I
 7 served as co-lead counsel in *Grays Harbor Adventist Christian School et al. v. Carrier Corp.*,
 8 USDC W.D. Wash. at Tacoma, Cause No. CV05-5437-RBL (successfully representing over
 9 three million national consumers who alleged Carrier Corporation sold defective high
 10 efficiency furnaces); as sole lead counsel in *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d
 11 173 (2007) (successfully representing purchasers of vehicles, parts, and services against
 12 automobile dealers in Washington who illegally charged and collected B&O tax); as co-lead
 13 counsel in *Richison v. American Cemwood Corp.*, California Superior Court, San Joaquin
 14 County, Civil Action No. 005532 (successfully resolving national (excluding Colorado) class
 15 of Cemwood shake property owners who alleged they had purchased defective shakes); as sole
 16 lead counsel in *Wolf et al. v. Asiamerica et al.*, USDC W.D. Wash. at Seattle, Cause No. CV91-
 17 00385-WLD (successfully representing plaintiff class of investors in securities fraud action
 18 against international leveraged buyout corporation); as co-lead counsel in *Williams v.*
 19 *Weyerhaeuser*, California Superior Court, San Francisco County, Civil Action No. 995787
 20 (successfully resolving nationwide class involving defective hardboard siding); as co-lead
 21 counsel in *Cole v. Wells Fargo Bank N.A.*, USDC W.D. Wash. at Seattle, Cause No. C07-0916
 22 RSL (successfully resolving national class of consumers who were charged excessive fees on
 23 their accounts); as lead counsel in *Johnson et al. v. Amgen Boulder, Inc., et al.*, USDC W.D.
 24 Wash. No. C95-0204 (successfully resolving securities fraud case for class members who
 25 invested \$50 million in biotech venture for payments totaling up to \$82 million); and as lead
 26 counsel in *Barrett et al. v. Pacific Coast Building Products, Inc., d/b/a PABCO Roofing*

1 *Products*, King County Superior Court Cause No. 03-2-40234-6 SEA (successfully resolving a
2 national roofing shingles case that settled on an unlimited claims-made basis). This list is by
3 no means exhaustive. Attached at Exhibit 5 is my curriculum vitae.

4 I declare under penalty of perjury under the laws of the United States and the state of
5 Washington that the foregoing is true and correct, and that this declaration was executed in
6 Seattle, Washington, dated this 9th day of October, 2008.

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8 /s/ Kim D. Stephens, P.S.
9 Kim D. Stephens, P.S., WSBA #11984
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CERTIFICATE OF SERVICE

I hereby certify that on October 9th, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Attorneys for Defendant

1 DATED at Seattle, Washington, this 9th day of October, 2008.

2
3 By: /s/ Kim D. Stephens, WSBA #11984

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DECLARATION OF KIM D. STEPHENS IN SUPPORT OF
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SETTLEMENT - 11

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